

**CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY (CONTINUED) PART 310--
REIMBURSEMENT TO LOCAL GOVERNMENTS FOR EMERGENCY RESPONSE TO
HAZARDOUS SUBSTANCE RELEASES**

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Subpart A--General Information

Sec. 310.1 What is the purpose of this part?

This part sets up procedures for EPA to reimburse local governments for certain emergency response costs. Local governments may receive up to \$25,000 to help lighten financial burdens related to emergency response to hazardous substance releases. This reimbursement does NOT replace funding that local governments normally provide for emergency response.

Sec. 310.2 What is the statutory authority for this part?

This part is authorized under section 123 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96-510, 42 U.S.C. 9601-9675), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499, 42 U.S.C. 9601).

Sec. 310.3 What terms have specific definitions?

For purposes of this part except when otherwise specified:

- (a) Application means Form 9310-1, shown in Appendix III of this part, including all documentation and additional information you submit to support a request for reimbursement.
- (b) Date of completion means the date when you have completed all field work and you have received all deliverables (such as lab results, technical expert reports, or invoices) due under a contract or other agreement.
- (c) Emergency Planning and Community Right-to-Know Act of 1986 means Title III--Emergency Planning and Community Right-to-Know Act of the Superfund Amendments and Reauthorization Act of 1986 (EPCRA) (Pub. L. 99-499, 42 U.S.C. 11000-11050).
- (d) Federally-recognized Indian Tribe, as defined by section 101(36) of CERCLA, means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

- (e) General purpose unit of local government means the governing body of a county, parish, municipality, city, town, township, Federally- recognized Indian tribe or similar governing body. This term does not include special purpose districts.
- (f) Hazardous substance.
 - (1) Hazardous substance, as defined by section 101(14) of CERCLA, means:
 - (i) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act (Pub. L. 101-380, 33 U.S.C. 1251 et seq.);
 - (ii) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;
 - (iii) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (Pub. L. 89-272, 42 U.S.C. 3259 et seq.) (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);
 - (iv) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act (Pub. L. 101-380, 33 U.S.C. 1251 et seq.);
 - (v) Any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7401-7642); and
 - (vi) Any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (Pub. L. 94-469, 15 U.S.C. 2601- 2629).
 - (2) The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under paragraphs (f)(1)(i) through (f)(1)(vi) of this section, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).
- (g) Local emergency response plan means the emergency plan prepared by the Local Emergency Planning Committee (LEPC) as required by section 303 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or SARA Title III).
- (h) National Contingency Plan means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).
- (i) National Response Center means the national communications center located in Washington, DC, that receives and relays notice of oil discharge or releases of hazardous substances to appropriate Federal officials.
- (j) Pollutant or contaminant, as defined by section 104(a)(2) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

The term does not include petroleum, including crude oil and any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

- (k) Potentially responsible party (PRP) means any person who may be liable under section 107 of CERCLA for a release or threatened release of hazardous substances or pollutants or contaminants.
- (l) Release, as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment, but excludes:

any release that results in exposure to persons solely within a workplace, with respect to a claim that such persons may assert against the employer of such persons;

emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

release of source, by-product or special nuclear materials from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such act, or, for the purpose of section 104 of CERCLA or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under section 122(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604, 42 U.S.C. 2014 et seq.);

and the normal application of fertilizer. For purposes of this part, release also means the threat of release.

- (m) Single response means all of the concerted activities conducted in response to a single episode, incident, or threat causing or contributing to a release or threatened release of hazardous substances, or pollutants or contaminants.

Sec. 310.4 What abbreviations should I know?

The following abbreviations appear in this part:

CERCLA The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510, 42 U.S.C. 9601-9675), as amended by the Superfund Amendments and Reauthorization Act of 1986, also known as Superfund.

EPA or the Agency Environmental Protection Agency.

EPCRA Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99-499, 42 U.S.C. 11000-11050).

LEPC Local Emergency Planning Committee.

NCP National Oil and Hazardous Substances Pollution Contingency Plan also known as the National Contingency Plan (40 CFR part 300).

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| NRC | National Response Center. |
| OMB | Office of Management and Budget. |
| PRP | Potentially Responsible Party. |
| SARA | The Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, 42 U.S.C. 9601). |
| SERC | State Emergency Response Commission. |
| USCG | U.S. Coast Guard. |

Subpart B – Provisions

Sec. 310.5 Am I eligible for reimbursement? Who Can Be Reimbursed?

If you are the governing body of a county, parish, municipality, city, town, township, federally-recognized Indian tribe or general purpose unit of local government, you are eligible for reimbursement. This does not include special purpose districts.

Sec. 310.6 Are states eligible?

States are NOT eligible for reimbursement under this part, and states may NOT request reimbursement on behalf of their local governments.

Sec. 310.7 Can more than one local agency or government be reimbursed for response to the same incident?

No. EPA will accept only one reimbursement request for a single response. A single response includes all of the temporary emergency measures that ALL local governments or agencies conduct in response to a single hazardous substance release. If more than one local government or agency responds, you must decide among yourselves who will request reimbursement on behalf of all.

Sec. 310.8 Can EPA reimburse the entire cost of my response?

Possibly not. EPA can only reimburse you for temporary emergency measures you take in response to releases of hazardous substances, pollutants, or contaminants. The statute allows reimbursement for only certain costs, and by statute, the total amount of the reimbursement may not exceed \$25,000 for a single response.

Sec. 310.9 If more than one local agency or government is involved, can each receive up to \$25,000?

No. The maximum amount EPA can reimburse is \$25,000 for a single response, which includes all activities by ALL local responders. If the costs incurred by multiple local governments or agencies exceed \$25,000, you must decide among yourselves how the total reimbursement will be divided.

Sec. 310.10 What are temporary emergency measures?

- (a) Temporary emergency measures are actions taken to control or eliminate immediate threats to human health and the environment.
- (b) Examples of temporary emergency measures are:
 - (1) Site security;
 - (2) Controlling the source of contamination;
 - (3) Containing the release to prevent spreading;
 - (4) Neutralizing or treating pollutants released; and
 - (5) Controlling contaminated runoff.

Sec. 310.11 What costs are allowable?

- (a) Reimbursement under this part does NOT supplant funds you normally provide for emergency response. Allowable costs are only those necessary for you to respond effectively to a specific incident that is beyond what you might normally respond to.
- (b) Examples of allowable costs are:
 - (1) Disposable materials and supplies you acquired and used to respond to the specific incident;
 - (2) Payment of unbudgeted wages for employees responding to the specific incident (for example, overtime pay for response personnel);
 - (3) Rental or leasing of equipment you used to respond to the specific incident (for example, protective equipment or clothing, scientific and technical equipment) (Note: rental costs are only allowable for the duration of your response; once you complete the response to the specific incident, further rental costs are NOT allowable);
 - (4) Replacement costs for equipment you own that is contaminated or damaged beyond reuse or repair, if you can demonstrate that the equipment is a total loss and that the loss occurred during the response (for example, self-contained breathing apparatus irretrievably contaminated during the response);
 - (5) Decontamination of equipment contaminated during the response;
 - (6) Special technical services specifically required for the response (for example, costs associated with the time and efforts of technical experts/specialists that are not on your staff);
 - (7) Other special services specifically required for the response (for example, utilities);
 - (8) Laboratory costs of analyzing samples that you took during the response;
 - (9) Evacuation costs associated with the services, supplies, and equipment that you procured for a specific evacuation; and

(10) Containerization or packaging cost and transportation and disposal of hazardous wastes.

(c) To be allowable, costs must:

- (1) NOT be higher than what a careful person would spend for similar products or services in your area; and
- (2) Be consistent with CERCLA and the federal cost principles outlined in OMB Circular A-87, "Cost Principles for State and Local Governments."

(Copies of the circular are available from the Office of Administration, Publications Office, New Executive Office Building, 725 17th Street, NW., Room 2200, Washington, DC 20503.)

(d) EPA will make final determinations on whether your costs are reasonable.

Sec. 310.12 What costs are NOT allowable?

(a) Costs that are NOT allowable are expenditures you incur in providing what are traditionally local services and responsibilities. Examples include:

- (1) Routine firefighting;
- (2) Preparing contingency plans;
- (3) Training; and
- (4) Response drills and exercises.

(b) Costs that are NOT allowable also include items such as supplies, equipment, and services that you routinely purchase to maintain your ability to respond effectively to hazardous releases when they occur. Examples of other costs that are NOT allowable are:

- (1) Purchase or routine maintenance of durable equipment expected to last one year or more, except when contaminated or damaged as described in Sec. 310.11(b)(4) and (b)(5);
- (2) Materials and supplies you did NOT purchase specifically for the response;
- (3) Rental costs for equipment that you own or that another unit of local government owns;
- (4) Employee fringe benefits;
- (5) Administrative costs for filing reimbursement applications;
- (6) Employee out-of-pocket expenses normally provided for in your operating budget (for example, meals or fuel);
- (7) Legal expenses you may incur due to response activities, including efforts to recover costs from PRPs; and
- (8) Medical expenses you incur due to response activities.

Sec. 310.13 Do I need to notify anyone while the response is underway?

No. You should notify EPA, the National Response Center, or use another established response communication channel, but it is not a requirement for reimbursement. Telephone numbers for EPA regional offices and the NRC are in Appendix II to this part.

Sec. 310.14 Must I try to recover my costs from those potentially responsible for the emergency?

Yes. Before applying for reimbursement from EPA, you must try to recover your costs from all known potentially responsible parties (PRPs). After you ask them for payment, you should give PRPs 60 days either to pay you, express their intent to pay you, or indicate willingness to negotiate.

You must also try to get reimbursed by other sources (for example, your insurance company or your state). If you are not successful, you must certify on your reimbursement application that you made a good-faith, reasonable effort to recover your costs from other sources before applying to EPA. If you recover any portion of the costs from these sources after you receive reimbursement from us, you must return the recovered amount to EPA.

Sec. 310.15 How do I apply for reimbursement?

- (a) You must apply for reimbursement on EPA Form 9310-1, shown in Appendix III to this part.
- (b) You must submit your request within one year of the date you complete the response for which you request reimbursement. If you submit your application late, you must include an explanation for the delay. We will consider late applications on a case-by-case basis.
- (c) Your application must be signed by the highest ranking official of your local government (for example, mayor or county executive), or you must include a letter of delegation authorizing a delegate to act on his or her behalf.
- (d) Mail your completed application and supporting data to the LGR Project Officer, (5204-G), Office of Emergency and Remedial Response, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Sec. 310.16 What kind of cost documentation is necessary? Cost documentation must be adequate for an audit. At a minimum, you must:

- (a) Include a description of the temporary emergency measures for which you request reimbursement;
- (b) Specify the local agency that incurred the cost, (such as, the Town Fire Department, the County Health Department, or the City Department of Public Works);
- (c) Include invoices, sales receipts, rental or leasing agreements, or other proof of costs you incurred; and
- (d) Certify that all costs are accurate and that you incurred them specifically for the response for which you are requesting reimbursement.

Sec. 310.17 Are there any other requirements?

- (a) You must certify that reimbursement under this regulation does not supplant local funds that you normally provide for emergency response. This means that the reimbursement you request is for costs you would not normally incur; rather, they are for significant, unanticipated costs related to a specific incident beyond what you normally respond to.
- (b) You must also certify that your response actions are not in conflict with CERCLA, the National Contingency Plan (NCP), and the local emergency response plan prepared by your Local Emergency Planning Committee, if there is one. If you need help with this requirement, contact the LGR Help line (800-431-9209) or your EPA regional office.
- (c) You, as a local government, should be included in the local emergency response plan completed by your LEPC, as section 303(a) of EPCRA requires. This does not apply if your State Emergency Response Commission (SERC) has not established an LEPC responsible for the emergency planning district(s) that encompasses your geographic boundaries.

Sec. 310.18 How will EPA evaluate my application?

- (a) When we receive your application, we will make sure it meets all requirements of this section. If your request is incomplete or has significant defects, we will contact you for additional information. You should provide any additional information within 90 days. If you don't provide requested information within a year, we may deny your application.
- (b) If your application meets all requirements, we will consider whether the costs claimed are allowable and reasonable. We will then send you written notification of our decision to award or deny reimbursement in full or in part.

Sec. 310.19 Under what conditions would EPA deny my request?

We may deny your reimbursement request in full or in part if:

- (a) Your records, documents, or other evidence are not maintained according to generally accepted accounting principles and practices consistently applied;
- (b) The costs you claim are NOT reasonable or allowable, that is, they are higher than what a careful person would spend for similar products or services in your area; or
- (c) You do not supply additional information within one year from when we request it; and
- (d) Reimbursement would be inconsistent with CERCLA section 123, or the regulations in this part.

Sec. 310.20 What are my options if EPA denies my request?

If we deny your request because you failed to meet a requirement in this regulation, you may request, in writing, that EPA grant an exception. You may also file a request for an exception with your initial application.

In your request for an exception, you must state the requirement you cannot comply with and the reasons why EPA should grant an exception. We will grant exceptions only if you establish good cause for the exception and if granting the exception would be consistent with section 123 of CERCLA.

Sec. 310.21 How does EPA resolve disputes?

- (a) The EPA reimbursement official's decision is final EPA action unless you file a request for review by registered or certified mail within 60 calendar days of the date you receive our decision. Send your request for review to the address given in Sec. 310.15(d).
- (b) You must file your request for review with the disputes decision official identified in the final written decision.
- (c) Your request for review must include:
 - (1) A statement of the amount you dispute;
 - (2) A description of the issues involved;
 - (3) A statement of your objection to the final decision; and
 - (4) Any additional information relevant to your objection to EPA's decision.
- (d) After filing for review:
 - (1) You may request an informal conference with the EPA disputes decision official;
 - (2) You may be represented by counsel and may submit documentary evidence and briefs to be included in a written record; and
 - (3) You will receive a written decision by the disputes decision official within 45 days after we receive your final submission of information unless the official extends this period for good cause.

Sec. 310.22 What records must I keep?

- (a) If you receive reimbursement under the regulations in this part, for three years you must keep all cost documentation and any other records related to your application. You must also provide EPA access to those records if we need them.
- (b) After three years from the date of your reimbursement, if we have NOT begun a cost recovery action against a potentially responsible party, you may dispose of the records. You must notify EPA of your intent to dispose of the records 60 days before you do so, and allow us to take possession of these records beforehand.

Sec. 310.23 How will EPA rank approved requests?

- (a) If necessary, EPA will rank approved reimbursement requests according to the financial burden the response costs impose on the local governments. We will estimate your financial burden by calculating the ratio of your allowable response costs to your annual per capita income adjusted for population.

We will make adjustments for population so that a large city with a low per capita income will not necessarily receive a higher rank than a small town with a slightly higher per capita income. We will also consider other relevant financial information you may supply.

- (b) We will use the per capita income and population statistics published by the U.S. Department of Commerce, Bureau of the Census, in Current Population Reports, Local Population Estimates, Series P-26, ``1988 Population and 1987 Per Capita Income Estimates for Counties and Incorporated Places," Vols. 88-S-SC, 88-ENC-SC, 88-NE-SC, 88-W-SC, 88- WNC-SC, March 1990.

The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies are available from the Bureau of the Census, Office of Public Affairs, Department of Commerce, Constitution Avenue, NE., Washington, DC 20230 (1-202-763-4040).

You may review a copy at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or at the Office of the Federal Register, 800 N. Capitol Street, NW., 7th Floor, Suite 700, Washington, DC.

- (c) Larger ratios receive a higher rank. We will reimburse requests with the highest ranks first. Once we rank your request, we will either:
 - (1) Reimburse the request; or
 - (2) Hold the request for reconsideration once additional funding is available.
- (d) The EPA reimbursement official will give you a written decision on whether the request will be reimbursed or held for future reconsideration.

Sec. 310.24 What happens if I provide incorrect or false information?

- (a) You must not knowingly or recklessly make any statement or provide any information in your reimbursement application that is false, misleading, misrepresented, or misstated.

If you do provide incorrect or false information, and EPA relies on that information in making a reimbursement decision, we may deny your application and withdraw or recover the full amount of your award. In such a case, we would give you written notice of our intentions.

- (b) If you, as a reimbursement applicant or someone providing information to the applicant, knowingly give any false statement or claim as part of any application for reimbursement under section 123 of CERCLA, you may be subject to criminal, civil, or administrative liability under the False Statement Act (Pub. L. 97-398, 18 U.S.C. 1001) the False Claims Act (Pub. L. 99-562, 31 U.S.C. 3729), and the Program Fraud and Civil Remedies Act (Pub. L. 99-509, 31 U.S.C. 3801).

APPENDIX I TO PART 310 – FREQUENTLY ASKED QUESTIONS

- (1) Can I be reimbursed for hazmat team salaries?

Generally, no; only unbudgeted overtime and/or extra time can be considered for reimbursement. (Sec. 310.11(b)(2))

- (2) Will I be reimbursed for the cost of a destroyed fire truck?

Up to \$25,000 of the cost of a lost fire truck can be considered an allowable cost and therefore, reimbursable. However, if the local government has insurance covering such losses, then we would not reimburse you for a destroyed fire truck. (Secs. 310.11(b)(4) and 310.14)

- (3) If I have a release in an elementary school, can the school district apply for reimbursement?

No, for purposes of the regulation in this part, a school district is considered a special purpose district of local government and therefore not eligible for reimbursement. The county or city where the incident happened may apply for reimbursement on behalf of the school district. (Secs. 310.03(e) and 310.05)

- (4) Why are incidents that involve a release of petroleum not eligible?

Because this program is authorized under CERCLA, and petroleum is excluded under CERCLA, we can't reimburse you for response to releases involving only petroleum. If, however, some hazardous substances are also involved, your incident may be reimbursed. (Sec. 310.03(f))

- (5) Can I be reimbursed for laying water lines to a community whose drinking water is affected by a release?

No, laying water lines doesn't fall within the definition of temporary emergency measures. Providing bottled water on a temporary emergency basis is reimbursable. (Sec. 310.10(a))

- (6) What if EPA gets too many applications in one year?

In the beginning of the program, there was a statutory limitation on the amount of the Superfund that could be used for reimbursements. That limitation was approximately \$1,000,000. The limitation has expired, and EPA has only reimbursed slightly over \$1,000,000 in ten years. There has not been a year where we received too many applications.

- (7) If I incur significant costs trying to recover from the PRP, can I be reimbursed by EPA for those costs?

No, legal expenses are not allowable costs. (Sec. 310.12(b)(7)).

- (8) Can I add attachments to the Application Form?

Yes, attach any additional information that you feel is necessary. EPA will review all the information that you send.

- (9) Do I have to notify EPA before I send an application in, or before I take a response action?

No, you aren't required to notify EPA in either case. We do suggest that you call the National Response Center to report the hazardous substance release, or if you use other response reporting channels, use them. If you need some help before submitting your application, we do suggest you call the LGR Help line (800-431-9209).

- (10) If two incidents happen in my town, within hours of each other, do I have to submit two separate applications?

You aren't required to submit separate applications in this case, but if your total response costs are more than \$25,000, it may be in your interest to submit separate applications for each single response. (Sec. 310.9)